IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

Devilal Vs. State of Rajasthan & Anr.

S.B.CR.REVISION PETITION NO.271/2006

against the order dt.3.5.2003 passed by Judicial Magistrate, Doongla, Distt. Chittorgarh.

DATE OF ORDER :: April 25, 2006

HON'BLE MR.H.R.PANWAR,J.

Mr. K.R.Choudhary, for the petitioner.
Mr. J.P.S.Choudhary, Public Prosecutor.
Mr. B.N.Kalla, for non-petitioner No.2.

BY THE COURT:

By the instant criminal revision petition under section 397/401 of the Code of Criminal Procedure, 1973 (for short `the Code` hereinafter), the petitioner has challenged the order dt. 3.5.2003 passed by Judicial Magistrate, Doongla, Distt. Chittorgarh (for short `the trial court` hereinafter), whereby the trial court took cognizance of the offences under sections 447 I.P.C. and section 3(v) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short `the Act` hereinafter) and issued the process.

The order issuing process is not revisable in view of the decisions of the Hon'ble Supreme Court in Adalat Prasad vs. Rooplal Jindal & Ors., JT 2004 (7) SC 243 as also the decision of Three Judge Bench of Hon'ble Supreme Court in Subramanim Sethuram vs. State of Maharashtra & Anr., 2004 CRI.L.J. 4609. Even on merit, after investigation, the police found the case against the petitioner and co-accused Subhash Trivedi and challan was prepared and also filed against Bhupendra Kumar. However, it appears that subsequently, the investigation was changed and negative final report was filed. On filing of negative final report, the trial court took the cognizance of the offences noticed above. The order taking cognizance cannot be said to be erroneous as it is the domain of the police to investigate the matter but it is the exclusive jurisdiction of the trial court to take cognizance of the offence.

In Jagdish Ram vs. State of Rajasthan and Anr., A.I.R. 2004 SC 1734, the Apex Court held as under:

> "At this stage, the Magistrate had only to decide whether sufficient ground exists or not for further proceeding in the matter. It is well settled that notwithstanding the opinion of the police, a Magistrate is empowered to take cognizance if the material on record makes out a case for the said purpose. The investigation is the exclusive domain of the police. The taking of cognizance of the offence is an

> area exclusively within the domain of a Magistrate. At this stage, the Magistrate has to be satisfied whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction, can be determined only at the trial and not at the stage of inquiry. At the stage of issuing the process to the accused, the Magistrate is not required to record reasons."

Keeping in view the aforesaid decisions of the Hon'ble Supreme Court, I do not find any error, illegality or perversity in the order impugned.

Consequently, the revision petition fails and is hereby dismissed. Stay petition also stands dismissed.

[H.R.PANWAR],J.

m.asif/-